MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

ULV4622 -LAW OF EVIDENCE II

(All Sections / Groups)

6 March 2019

Reading Time : 9.00am -9.15am (15 Minutes)
Answering Time : 9.15am – 12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer any **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE
   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Answer BOTH parts of this question.

Part (a)

"Inadmissible evidence is always inadmissible."

(per Kamardin Hashim JCA (delivering judgment of the court) in *Emery Shazmal bin Abd Malek v Public Prosecutor and other appeals [2016] 6 MLJ 790.)*

Discuss the above statement with reference to Section 167 of the Evidence Act 1950 and case laws.

(13 Marks)

Part (b)

Discuss the rules as to notice to produce with regard to secondary evidence as stated in Section 66 of the Evidence Act 1950 with reference to Section 164 of the Evidence Act 1950.

(12 Marks)

(Total: 25 marks)

QUESTION 2

"Stephen in his Digest appears to have made his intentions to limit the statutory exceptions to similar fact evidence within the confines of section 14 and 15 by only placing these two sections under a separate chapter which he telling titled 'Occurrence similar to but unconnected with the fact in issue, irrelevant except in certain cases', while excluding section 11 from the same. To the originalists who argue that section 11(b) was never intended to operate as an exception to similar fact evidence, both Stephen's commentary and the exclusion of the section from the specific chapter dealing with the concept of *res inter alios acta alteri nocere non debet*, serves as the very lynchpin to end any further debate."

(*"Similar Fact Evidence in Malaysia: A Review of Section 11(b) of the Evidence Act 1950"*, Mageswary Siva Subramaniam, Asia Pacific Law Review (2018) Volume 26 2018 Issue 1, pages 59-76)

Critically evaluate the above statement with reference to relevant authorities.

(Total: 25 marks)

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QUESTION 3

Answer BOTH parts of this question.

Part (a)

Briefly describe the concept of judicial notice as recognised by the law of evidence.

(7 Marks)

Part (b)

Jedi was charged under s 376(1) of the Penal Code for committing rape. During the trial, the prosecution called Leia, a chemist from the Chemistry Department as a witness to adduce DNA evidence. Jedi's trial was the first time Leia testified in a court since she joined the department 6 months ago. She has a degree in science (majoring in Chemistry). She admitted that DNA science predominantly deals with the science of Biology. However, after reporting for duty at the Chemistry Department, she had undergone 3 months' intensive course on how to conduct forensic DNA analysis. During her testimony, Leia informed the court that the result of the DNA analysis that she conducted conclusively showed that the DNA belonged to Jedi and therefore, he was the rapist. She did not however provide much, reasons for such a conclusion except stating that Jedi's DNA matched the DNA found inside the victim's private parts. During the defence stage, Jedi's counsel called an expert on DNA analysis from a private laboratory to challenge the finding made by Leia. However, the trial judge in his grounds of judgment ruled that Leia was an expert and chose not to accept the testimony given by the expert called on behalf of the defence. Jedi was subsequently convicted and is now appealing against the ruling of the trial judge on expert evidence .

Advise Jedi whether he would be successful in his appeal.

(18 Marks)

(Total: 25 marks)

Continued...

QUESTION 4

Harv, aged 45 was charged with physical sexual assault on a child under section 14 of the Sexual Offences Against Children Act 2017 and for using criminal force with the intention of outraging modesty under s 354 of the Penal Code. He was alleged to have committed the assault on 1 August 2017 between 4pm to 6pm at Pangsapuri Harmoni, Jalan Kennedy, Georgetown, Penang by forcefully kissing the victim. The victim, ZZ was aged 12 years and 6 months at the time of the incident and was aged 13 years during the trial. At the end of trial Harv was convicted of the 2 charges and now he wishes to appeal. The following evidence was tendered during the trial:

(a) a video recording of ZZ's police interview about the incident which was recorded on 2 August 2017. The video recording was tendered as ZZ's evidence-in-chief. ZZ was further called as a prosecution witness during trial and gave oral evidence taken through a screen to protect her identity. The trial court admitted the video recording in evidence and allowed ZZ's testimony without a preliminary inquiry to assess her competency. At the end of the prosecution's case the court ruled that the evidence given by ZZ was capable of sustaining a *prima facie* case even if uncorroborated and ordered Harv to enter his defence;

(15 marks)

(b) in his own evidence Harv had claimed that the incident was consensual and that ZZ who befriended him on Facebook had misled him about her age. He claimed that ZZ had informed him that she was a 20 year old university student. Harv had also stated that he was a father and had 2 daughters of his own. The prosecution was then allowed to cross examine Harv on his previous charge for sexual assault which resulted in an acquittal in 2005.

(10 marks)

Analyse Harv's grounds of appeal in (a) and (b) above.

(Total: 25 marks)

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QUESTION 5

Answer BOTH parts of this question.

Part (a)

JY Land Bhd (the plaintiff) and Senja Sdn.Bhd (the defendant) had been involved in a dispute regarding the management control of a hotel in Port Dickson, known as 'The Pantai Hotel'. A civil suit was initiated by the plaintiff against the defendant in 2017 for a declaration on the management control of the said hotel. In the course of the civil suit, counsel for the defendant wished to tender in evidence an email written by the plaintiff's solicitor, one Mr. Shark and call him as a witness. The said email which had been addressed to the plaintiff was written by Mr. Shark in his capacity as a solicitor and provided legal advice on the subject matter of the present dispute. The plaintiff wishes to object to this.

Advise the parties on the evidential issues.

(15 marks)

Part (b)

"The fact that a document is a public document does not mean everyone is entitled to have access to it."

Discuss.

(10 Marks)

(Total: 25 marks)

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